

EASEMENT AND RESTRICTION AGREEMENT

THIS AGREEMENT is made and entered into this 22nd day of May 1989 by and between ReSolve, Inc., a Massachusetts corporation having a usual place of business in North Dartmouth Bristol County, Massachusetts, and the Settling Defendants as defined in a Consent Decree filed with the United States District Court for the District of Massachusetts on February 9, 1989 in U.S. v. ADAC Corporation et al, Civil Action No. 89-0307-S (the "Consent Decree").

WITNESSETH:

WHEREAS, ReSolve, Inc. is the owner of certain real property located on North Hixville Road in North Dartmouth, Bristol County, Massachusetts, as more particularly described in Exhibit A hereto which is made part hereof (the "ReSolve Site");

WHEREAS, the ReSolve Site comprises the major portion of a site designated pursuant to the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et. seq. ("CERCLA") in September, 1983 by the United States Environmental Protection Agency (hereinafter "EPA") as a Superfund National Priorities List Site (the "Site");

WHEREAS, EPA, The Commonwealth of Massachusetts (the "Commonwealth") and the Settling Defendants have entered into

*Restriction
agreed.
8/1/95
3512-98✓*



the Consent Decree pursuant to which the Settling Defendants are authorized and required to perform certain response actions at the Site (hereinafter the "Work");

WHEREAS, the Consent Decree provides that the Settling Defendants shall secure access to the Site for the Settling Defendants, EPA, the Commonwealth and their respective authorized representatives or agents for purposes of the performance of the Consent Decree;

WHEREAS, the Consent Decree also provides that the Settling Defendants shall obtain deed restrictions which ensure non-interference with the performance of the Work and which provide for certain "institutional controls" as specified in the Consent Decree;

WHEREAS, the Consent Decree further provides that if the Settling Defendants are unable to secure said access or deed restrictions, the United States and the Commonwealth shall thereafter assist the Settling Defendants in obtaining the same;

WHEREAS, EPA and the Commonwealth each have broad authorities to require site access and impose appropriate restrictions, including, but not limited to, the authority specified in Section 104(e) of CERCLA;

WHEREAS, in Civil Action No. 46049 in the Massachusetts Superior Court Department of the Trial Court, a Judgment was entered providing the Commonwealth with continuous and unimpeded access to the ReSolve Site for all clean-up, remediation, restoration and long-term maintenance activities reasonably necessary at the ReSolve Site; and

WHEREAS, ReSolve, Inc. is willing to grant to the Settling Defendants, EPA, the Commonwealth and their respective representatives, agents, employees, contractors and sub-contractors (hereinafter individually and collectively referred to as the "Benefitted Parties") the requested rights of access and is also willing to restrict the present and future uses of the ReSolve Site in order to ensure non-interference with the performance of the Work and to provide for the required institutional controls.

NOW, THEREFORE, in consideration of the foregoing, of the Settling Defendants' conducting the Work and other activities authorized by or related to the Consent Decree and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ReSolve, Inc. grants, conveys, covenants and agrees as follows:

1. Easements.

ReSolve, Inc. hereby grants and conveys to the Benefitted Parties and their successors and assigns the irrevocable, perpetual right and easement to enter upon the ReSolve Site with men, vehicles and equipment and machinery (of every kind and character) in order to plan for, undertake and conduct the Work and all other activities authorized by or related to the Consent Decree. Said right and easement shall include, without limiting the generality of the foregoing, the right to erect fences and other barriers on and around the ReSolve Site; to excavate in, upon and under the ReSolve Site; to move or remove soil and/or sediments; to treat and replace soil and/or

sediments; to change the grades and contours of the ReSolve Site; to extract, treat and/or remove surface water and/or groundwater; to reinject groundwater at one or more locations; to change surface water and/or groundwater flow patterns; to install, maintain, repair and replace one or more temporary or permanent monitoring wells; and to construct, erect or install and maintain, repair and replace temporary or permanent roads, buildings or other structures, utilities, drainage pipes, ditches, conduits and other improvements of every kind and character.

2. Restrictions.

Consistent with the requirements for the imposition of certain "institutional controls" on and with respect to the Site as set forth in the Consent Decree, ReSolve, Inc. hereby covenants and agrees for itself and all its successors and assigns, including all its successors in title to the ReSolve Site, that:

(a) Neither it nor its said successors and assigns shall take or cause to be taken any action(s) which will interfere in any way with the performance of the Work or any other activity authorized by or related to the Consent Decree.

(b) Neither it nor its said successors and assigns shall enter upon or attempt to enter upon the ReSolve Site without first (i) obtaining the written permission of the Settling Defendants (acting by and through the then serving Executive Director of the ReSolve Site Group, an unincorporated association), EPA and the Commonwealth and (ii) complying with

all applicable health, safety and other precautions relating to the ReSolve Site and to the Work and other activities being performed thereon or undertaken in connection therewith.

(c) From and after the completion of the Work, neither it nor its said successors and assigns shall take or permit to be taken any of the following actions with respect to the Premises:

(i) The drilling or installation of any wells for the extraction of groundwater which may be under or emanating from the ReSolve Site, with the sole exception of groundwater extraction, reinjection, monitoring and/or other like wells which may be installed by or on behalf of the Benefitted Parties as part of or connected with the Work or other activities authorized by or related to the Consent Decree;

(ii) The construction and/or use of any buildings, structures or improvements of any kind or character upon, in or under the ReSolve Site, with the sole exception of such buildings, structures and improvements (including equipment, machinery and materials) which are part of or connected with the Work or other activities authorized by or related to the Consent Decree.

It is specifically intended and declared that these restrictions shall be perpetual and shall run with and bind the real property comprising the ReSolve Site unless and until they are released at any time or from time to time, in whole or in part, by written instrument(s) executed by the Settling Defendants (acting by and through the then serving Executive

Director of the above-described ReSolve Site Group), EPA and the Commonwealth. Each of these restrictions shall be fully enforceable by each of the Settling Defendants and by EPA and the Commonwealth.

3. Confirming or Extending Documents or Instruments.

ReSolve, Inc. agrees, at the request of the Benefitted Parties, promptly to sign, seal, acknowledge and deliver in form suitable for recording with the Bristol County Registry of Deeds and all other appropriate offices of public record such other instruments and documents as the Benefitted Parties shall deem necessary or appropriate:

(a) to confirm or perfect the easements and restrictions herein granted or set forth; and

(b) to extend, and thereby continue in full force and effect, the said easements and restrictions.

The said instruments and documents shall include, without limiting the generality of the foregoing, all notices or instruments of extension required by the provisions of Chapter 184 of the Massachusetts General Laws with respect to the maintenance in force of restrictions affecting real property.

4. Governing Law; Interpretation.

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and shall be liberally interpreted so as to effect its remedial purpose of ensuring access to the ReSolve Site and the Site for purposes of performance of the Work and all other activities authorized or related to the Consent Decree and of ensuring

non-interference with the conduct of the Work and said other activities, as well as the continued effectiveness of all institutional controls contemplated by the Consent Decree.

5. Binding Effect and Power of Attorney.

This Agreement shall be binding upon all successors and assigns of ReSolve, Inc. The provisions of paragraph 1 hereof shall be enforceable by each of the Benefitted Parties and their respective successors and assigns, and the provisions of paragraph 2 hereof shall be enforceable by each of the Settling Defendants and by EPA and the Commonwealth. In the event that ReSolve, Inc. shall no longer have legal existence or shall fail to sign, seal, acknowledge and deliver any document or instrument referred to in paragraph 3 hereof within thirty (30) days after written request therefor has been made by a Benefitted Party in accordance with the notice of provisions of paragraph 7 hereof, then in either such case the Settling Defendants (acting by and through the then serving Executive Director of the above-described ReSolve Site Group) or EPA or the Commonwealth shall have the right to sign, seal, acknowledge and deliver any document or instrument referred to in said paragraph 3 for and on behalf of ReSolve, Inc. or ReSolve Inc.'s then successor in title to the ReSolve Site, as the case may be, and such document or instrument shall be binding upon ReSolve, Inc. and its successors in title to the ReSolve Site. For purposes of this paragraph 5, ReSolve, Inc. hereby designates each of (a) the Settling Defendants (acting by and through the then serving Executive Director of the

above-described ReSolve Site Group), (b) EPA and (c) the Commonwealth as its true and lawful attorney-in-fact, with full power of substitution, to act for and on its behalf. This power of attorney, being coupled with an interest in the ReSolve Site, is and shall be irrevocable.

7. Notices.

All notices, requests, demands or other written communication shall be deemed duly given at such time as they are deposited into the United States mails sent by certified or registered mail, return receipt requested, addressed to:

ReSolve, Inc.

c/o Attorney Robert K. Harrington
7 North Main Street
P.O. Box 1367

Fall River, MA 02722

8. No Waiver.

No failure to assert or exercise any right or easement or to enforce any restriction hereunder on any one or more occasion(s), or any other conduct of the Benefitted Parties, shall constitute or result in a waiver thereof, it being the intent and understanding of the parties that the easements and restrictions herein set forth may not be waived except by written instrument signed, sealed, acknowledged and delivered by the party being charged with the waiver; nor shall waiver on any one occasion be construed as a continuing waiver so as to constitute a waiver on another occasion unless specifically so stated in the instrument of waiver.

9. Authorized Representative of the ReSolve Site Group.

ReSolve, Inc. and all other persons who deal with the ReSolve Site in connection with the easements and restrictions set forth in this Agreement shall be entitled to rely upon documents and instruments as being duly authorized by and binding upon the Settling Defendants, if such documents or instruments are executed and delivered by and on behalf of the Settling Defendants by the Executive Director of the ReSolve Site Group. A certificate executed by a party who certifies therein that it is the then duly serving Executive Director of the ReSolve Site Group may be relied upon as conclusive evidence of the facts set forth therein by all persons who do not have actual knowledge to the contrary.

10. Amendment.

This Agreement may be modified or amended only by written instrument signed, sealed, acknowledged and delivered by ReSolve, Inc., the Settling Defendants (acting by and through the then serving Executive Director of the above-described ReSolve Site Group), EPA and the Commonwealth.

IN WITNESS WHEREOF, this Easement and Restriction Agreement has been signed, sealed, acknowledged and delivered by William Jackson, as President and Treasurer of Resolve, Inc., being hereunto duly authorized, for and on behalf of ReSolve, Inc. as of the date first above written.

John J. Harrington
WITNESS

RESOLVE, INC.

By:

William F. Jackson
Its President and Treasurer

03121

BK2334 PG 0100

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

May 22, 1989

Then personally appeared William F. Jackson,
President and Treasurer as aforesaid, and acknowledged the
foregoing instrument to be his free act and deed and the free
act and deed of ReSolve, Inc., before me



Notary Public, Robert K. Harrington
My Commission Expires: 2-8-91

EXHIBIT A

The land in Dartmouth, County of Bristol, Massachusetts, situated Easterly from the Easterly line of the road leading Northerly from the village of Hicksville, so-called, as bounded and described in the deed from William F. Darling to Re-Solve, Inc. dated February 28, 1956, and recorded with Bristol South District Registry of Deeds at Book 1180, Page 145.

The said land has the benefit of and is subject to the rights, rights of way and easements set forth in said deed.

Received & Recorded *June 12 1989* at *12 hrs. 14 min. P.M.*

Attest: *John Gomez* Registrar

1958m

11011